Submitted on Motion to dismiss
Judge Davy case
Dec'd

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~111~~ 204

EMILE MARQUEZE, WILLIAM McMASTERS, J'R, AND ALEXIS BONNECAZE, AS E. MARQUEZE & CO., PLAINTIFFS IN ERROR,

vs.

S. BLOOM, S. KAHN, A. LEVI, AND S. ADLER, AS BLOOM, KAHN & CO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 1, 1871.

Dec. 1871.

[redacted]

SUPREME COURT OF THE UNITED STATES.

No. 444.

EMILE MARQUEZE, WILLIAM McMASTERS, J'R, AND ALEXIS BONNECAZE, AS E. MARQUEZE & CO., PLAINTIFFS IN ERROR,

vs.

S. BLOOM, S. KAHN, A. LEVI, AND S. ADLER, AS BLOOM, KAHN & CO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 1980.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

A. & M. Voorhies for plaintiffs, appellees.
Race, Foster & E. T. Merrick for A. Levi, def't, appellant.
E. W. Huntington for Bloom, Kahn & Co., app'l's.

Transcript of appeal.

Supreme court of La.

Filed January 12th, 1869.
(Signed) M. P. JULIAN,
Dep'y Clerk.

2 Appealed from the fourth district court for the parish of Orleans.

E. MARQUEZE AND Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

TRANSCRIPT.

Petition.—Filed 19th April, 1866.

To the hon'ble the judge of the fourth district court of the parish of Orleans:

The petition of Emile Marqueze and William McMaster, composing the commercial firm of E. Marqueze & Co., of the city of New Orleans, with respect, represents—

That Solomon Bloom, Solomon Adler, Samuel Kahn, and Abraham Levi, composing the commercial firm of Bloom, Kahn & Co., formerly of Clinton, La., but now of the city of New Orleans, are justly and truly indebted to them in the full sum of fourteen hundred and seventy-
3 nine dollars and twenty-two cents, ($1,479.22,) besides interest, as follows:

That, on the 21st day of March, 1861, the said Bloom, Kahn & Co. purchased from your petitioners merchandise to the amount of three hundred and fifty-three ($353.97) dollars and ninety-seven cents; on the 11th of April ensuing merchandise to the amount of seventy-nine ($79.85) dollars and eighty-five cents; on the 27th day of June, 1861, merchandise to the amount of one thousand and forty-five ($1,045.40) dollars and forty cents.

The price of said merchandise was to be paid four months from their respective dates of purchase, except one-half of the last item of $1,045.40, which was to have been paid cash. The account is hereto annexed, and made part of this petition.

Your petitioners complied with their contract, and sold and delivered

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans,
In the city of New Orleans:

9 E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

Messrs. Bloom, Kahn & Co. and Solomon Adler:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the honorable Paul E. Theard, judge of the said court, the 24th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) E. O'SULLIVAN,
D'y Clerk.

Return on citation.—Filed 27th April, 1866.

Rec'd April 24th, 1866, and on the 25th day of the same month and year served a copy of within citation and accompanying petition, personally, on Solomon Adler, def'd't herein.

Ret. same day.

(S'g'd) W. WALSH,
D'y Sh'ff.

Sh'ff's fees, $1.00.

10 *Citation.*

STATE OF LOUISIANA,
Fourth District Court of New Orleans,
In the city of New Orleans:

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

Messrs. Bloom, Kahn & Co. and Abraham Levi:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in ten days after the service hereof.

Witness the honorable Paul E. Theard, judge of the said court, the 24th day of April, in the year of our Lord 1866.

[SEAL.] (Signed) E. O'SULLIVAN,
Deputy Clerk.

Return on citation.—Filed 27th April, 1866.

Rec'd April 24th, 1866, and on the 25th day of the same month and year, served a copy of within citation and accompanying petition, personally, on Abraham Levi, def'd't herein.

11 Ret. same day.

(Signed) W. WALSH,
D'y Sh'ff.

Sh'ff's fees, $1.00.

Answer of Bloom, Kahn & Adler.—Filed 30th April, 1866.

4th district court.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co.

Now come the defendants, Solomon Bloom, Solomon Adler, and Samuel Kahn, and for answer to the plaintiffs' petition, say that they deny all and singular the allegations contained in said petition, and they further say that the action aforesaid is barred by the prescription of three years.

Wherefore respondents pray that plaintiffs' claims be rejected, and they pray for their costs and general relief, &c.

(Signed) E. W. HUNTINGTON, *Att'y.*

Answer of Levi.—Filed 5th May, 1866.

4th district court of New Orleans.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

12 In this case the defendant, A. Levi, comes, and for answer to plaintiffs' petition, says he denies generally and specially each and every allegation therein contained, and particularly denies that he, at the pretended dates mentioned in said petition, or since, resided at said town of Clinton, in said parish of East Feliciana, La., but on the contrary he had for many years previous resided and had his domicil in this city, where he has continued to have his residence and domicil up to the present time.

And further answering, this defendant says that he pleads in bar of the plaintiffs' action the prescription of three years. Wherefore he prays that the plaintiffs' demand may be rejected, and for costs.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Att'ys for A. Levi.

Continuance.

TUESDAY, 26*th May*, 1868.

Present, Hon. Paul E. Theard, judge.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

This case fixed for trial this day was continued by preference.

13 *Continuance.*

TUESDAY, 9*th June*, 1868.

Present, Hon. Paul E. Theard, judge.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 17133.

This case, fixed for trial this day, was continued to the next November term of this court.

invoiced. For several years I have been pretty much at the head of the establishment.

(Signed) E. BONNECAZE.

Sworn to and subscribed before me this 18 Nov., 1868.

(S'g'd) FRANK WALL, *D'y Cl'k.*

GEORGE H. PABST, for pl'ff, sworn, says:

I believe that one of the bills was packed by myself, but I can't tell which one; perhaps both were packed by me. I remember packing goods for the firm of Bloom, Kahn & Co.

Cross-examined:

I know Mr. Levi; knew him before the war; I think, in 1861, that he did business in Carondelet, but don't know where he resided; have seen him repeatedly here.

(Signed) GEO. H. PABST.

Sworn to and subscribed to before me this 18th Nov., 1868.

(Signed) FRANK WALL, *D'y Cl'k.*

A. LEVI, for defendant, sworn, says:

My residence is in the parish of Orleans, No. 665 Magazine street.
19 I have resided in this city since October, 1854. I have a family, and they resided here permanently since 1854. I have kept house here since that time all the time. This city has been my residence and domicil, and also of my family, during that time. I resided here all during the war and all the time since. I have been engaged as commission-merchant at 39 & 55 Carondelet, continuously, since 1854.

Cross-examined:

The firm of Bloom, Kahn & Co. were doing business at Clinton, East Feliciana Parish, La. They were doing business there at the time the war broke out. Mr. Solomon Bloom, Solomon Adler, and Samuel Kahn were then residing at Clinton, to the best of my knowledge.

(Signed) A. LEVI.

Sworn to and subscribed before me this 18th Nov'r, 1868.

(S'g'd) FRANK WALL, *D'y Cl'k.*

Document m'k'd "A."—Filed 18th Nov., 1868.

Received from E. Marqueze & Co., in good order and condition, on board the steamboat called the Cotton, all the goods described below, which we promise to deliver, in like good order and condition,
20 without delay, at the port and to the consignee designated by the mark on the margin below:

Dray No. .] NEW ORLEANS, *April 12th*, 1861.

[Do not alter this receipt.]

Marks.	Articles.	
(Duplicate.) Bloom, Kahn & Co, Clinton.....	One case mer's'.....	$1

Document m'k'd "B."—Filed 18th Nov'r, 1868.

Received from E. Marqueze & Co., in good order and condition, on board the steamboat called the J. A. Cotton, all the goods described below, which we promise to deliver in like good order and condition, without delay, at the port and to the consignee designated by the mark in the margin below:

Dray No. .] NEW ORLEANS, *June* 28, 1861.

[Do not alter this receipt.]

Marks.	Articles.
(Original.) Bloom, Kahn & Co., Clinton, La.....	Twelve cases mer's'..... 1 c.12

21 *Document m'k'd "C."—Filed 18th November*, 1861.

Received from E. Marqueze & Co., in good order and condition, on board the steamboat called the Iberville, all the goods described below, which we promise to deliver in like good order and condition, without delay, at the port and to the consignee designated by the mark in the margin below.

Dray No. .] NEW ORLEANS, *M'ch* 23, 1861.

[Do not alter this receipt.]

Marks.	Articles.
(Duplicate.) B., K. & Co., Clinton, (via P. H. R. R.,) Port Hudson.....	Five cases m'd'..... $1 c.5

Continuance.

THURSDAY, 19*th Nov.*, 1868.

Present, Hon. Paul E. Theard, judge.

E. MARQUEZE & Co. *vs.* BLOOM, KAHN & Co. } No. 17133.

This case, fixed for to-day, was continued with preference for want of time.

Testimony.—Filed 2d December, 1868.

22 4th dist. ct.

E. MARQUEZE & Co. *vs.* BLOOM, KAHN & Co. } No. 17133.

L. A. LEVY, jr., a witness on the part of defendant, being duly sworn, on , saith that he has been acquainted with the defendant, A. Levi, since the year 1856, and, indeed, before that time. Said A. Levi has

resided with his family in the city of New Orleans since the year A. D. 1856, continuously up to the present time. During the whole time he has been engaged in business in this city, and he has had, since 1856, a domicil nowhere else, except in this city. He was in the city during the war, and since 1856 process could at any time have been made at his dwelling-house, where he resided with his wife, children, and servants, as well as at his office.

(Signed) L. A. LEVI, JR.

Sworn to and subscribed before me this 2d day of Dec., 1868.

(Signed) C. W. COLTON, *D'y Cl'k.*

Note of evidence.—Filed 3d Dec'r, 1868.

Pl'ff's counsel offers in evidence:

23 The testimony of Bonnecaze, Geo. H. Pabst, with the documents annexed. (See pp. 20–30.)

Offers also the account sued upon. (See p. 6.)

And, also, the procuration from Abraham Levi to Adler & Kahn.

Counsel for def't A. Levi offers in evidence:

The testimony of A. Levi, filed 18th Nov., 1868. (See p. 26.)

Also of L. A. Levy, jr., filed Dec. 2d, 1868. (See p. 31.)

Act of procuration.—Filed 3d December, 1868.

STATE OF LOUISIANA,
City of New Orleans.

Be it known that, on this sixteenth day of May, eighteen hundred and sixty-five, before me, Edward G. Gottschalk, a notary public, duly commissioned and sworn, in and for the city of New Orleans and the parish of Orleans, personally came and appeared Abraham Levi, of this city, who declared that he, together with Solomon Bloom, Solomon Adler, and Samuel Kahn, composed the firm of "Bloom, Kahn & Co.,"

24 (now in liquidation,) of Clinton, Louisiana, and that he does, by these presents, so far as he is concerned, appoint, nominate, and in his place and stead depute and put the said Solomon Adler and Samuel Kahn, now of this city, to be the liquidators of said firm of Bloom, Kahn & Co., and the affairs thereof; and for the purposes aforesaid to ask, demand, have, take, and by all lawful ways and means to recover and receive of and from all and every person or persons whomsoever, body or bodies corporate, all such sum or sums of *of* money, goods, debts, property, and effects, of whatsoever nature or kind, due and belonging to said firm, whether by bond, bill, note, book debt, account, merchandise, goods, wares, consignments, or otherwise, and to that end, with whom it may concern to adjust and settle all accounts, and upon recovery and receipt to make and give good and sufficient discharges and acquittances as liquidators; to appear before all courts of law and equity, and before all military courts or officers representing the Government of the *the* U. S. of America, there to do, prosecute, and defend, as occasion may require, or to compromise, compound, and agree in the

25 premises by arbitration or otherwise; to apply for and obtain all or any injunctions, attachments, sequestrations, and appeals; give security and sign bonds in the premises; and generally to do and perform all and whatsoever shall be requisite for the liquidating of said affairs, as fully as if herein specially provided for, or as he, said appearer, could or might do as one of the partners of said firm; said Levi

hereby agreeing to ratify all and whatsoever said attorneys shall lawfully do by virtue hereof.

And the said Adler and Kahn being here present, acknowledge to have received from him, said Levi, the notes and accounts of said firm of Bloom, Kahn & Co., amounting in all to the sum of sixty-eight thousand three hundred and twenty-five dollars ninety-three cents, ($68,325.93,) fully described and set forth in a list thereof, which said Adler and Kahn have signed as correct, and which I, notary, have para'phed to identify it herewith, which list is to remain annexed hereto as part hereof.

And it has been agreed between said appearers that they, the said Adler & Kahn, shall, as they hereby bind themselves, liquidate
26 the affairs of said firm in the following manner, to wit: They shall keep true and correct books of all the transactions relating to said liquidation, which books shall at all times be open to the inspection of him, said Levi. They shall not pay any of the liabilities of said firm of Bloom, Kahn & Co., without the written consent of their copartners, and they shall therefore be liable to their copartners for such debts as they may pay without said consent. They shall charge no commission or interest for their liquidating the said affairs. All moneys which they, said Adler & Kahn, may collect, shall be either immediately divided between the members of the said firm, or shall be deposited in this city, in the bank of Messrs. Pike, Lapeyre & Brother, to be divided whenever required by one of the copartners. Said Adler & Kahn shall report as soon as possible, to said Levi and said Bloom, the amount of moneys collected by them and the progress of the liquidation, and they bind themselves to do their best endeavors to recover whatever property or effects may belong to said firm; and all amounts collected or properly recovered doth and shall belong and be divided in the proportion
27 of one-fourth to each of the partners of said firm.

And under all which conditions and stipulations they, the said Adler & Kahn, accept the foregoing act of procuration.

And I, notary, have attached the U. S. internal revenue stamp of one dollar to this act.

Done and passed in my office, at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Selim Magner and Robert I. Preaux, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

(Original signed) A. LEVI.
" S. KAHN.
" S. ADLER.
" S. MAGNER.
" R. I. PREAUX.
" E. G. GOTTSCHALK, *N. P.*

[U. S. int. rev. stamp canceled, 5 c.]

A true copy.
New Orleans, 2d December, 1868.
[SEAL.] (Signed) E. G. GOTTSCHALK, *N. P.*

Case submitted.

THURSDAY, 3*d Dec'r*, 1868.

Present, Hon. Paul E. Theard, judge.

28 E. MARQUEZE & Co. } No. 17133.
vs.
BLOOM, KAHN & Co. }

This cause came on to-day for trial. A. & M. Voorhies, for pl'ffs.

Race, Foster, & Merrick for A. Levi. The other def'ts not represented.

After hearing pleadings, evidence, and counsel, the court took the same under consideration.

Judgment.

The law and the evidence being in favor of the plaintiffs, and for the reasons orally assigned in open court: It is adjudged, ordered, and decreed, that the plea of prescription set up by defendants be overruled, and that plaintiffs, E. Marqueze & Co., have judgment against and recover of the defendants, Bloom, Kahn & Co., and the individual members of said firm, to wit: Solomon Bloom, Solomon Adler, Samuel Kahn, and Abraham Levi, in solido, the sum of fourteen hundred and seventy-nine $\frac{22}{100}$ dollars, with legal interest on $353.97 from the 21st July, 1861; on $79.85 from the 11th August, 1861; on $522.70 from the 27th June, 1861; and on $522.70 from the 27th October, 1861, until paid,
29 and all costs of suit.

Rendered December 10th, 1868.

Signed December 21st, 1868.

(Signed) PAUL E. THEARD, *Judge.*

Rule for new trial.—Filed 14*th Dec'r*, 1868.

4th district court.

E. MARQUEZE & Co. } No. 17133.
vs.
BLOOM, KAHN & Co. }

On motion of Race, Foster, & E. T. Merrick, of counsel for A. Levi, one of the defendants in this case, and suggesting to the court that said Levi feels himself aggrieved by the judgment rendered against him: It is therefore ordered that the plaintiffs do show cause, on Monday next, the 21st December, 1868, at 10 o'clock a. m., why a new trial should not be granted the said Levi on the ground,

1st. That the court was in error of law in assuming that the dissolution of the firm of Bloom, Kahn & Co. had the effect to interrupt and suspend *sub*scription as to this defendant; and

2d. On the ground that said judgment is clearly contrary to law and evidence.

30 *Return on motion for new trial.—Filed* 17*th December*, 1868.

Received Dec. 14th, 1868, and on the 15th day of the same month and year served copy of the within motion and order on Mr. M. Voorhies, att'y.

Returned same day, &c.

(Signed) T. G. ROBERT, *D'y Sh'ff.*

Sh'ff's fees 50 c.

Rule dismissed.

MONDAY, 21*st Dec'r*, 1868.

Present, Hon. Paul E. Theard, judge.

E. MARQUEZE & Co. } No. 17133.
vs.
BLOOM, KAHN & Co. }

The rule taken in this case by d'ft Levi, on the 14th inst., for a new

trial, came on to-day for hearing, Race, Foster & Merrick for pl'ff, in rule submitted on the part of de'ft therein.

After hearing pleadings and counsel, it is ordered that said rule be dismissed, and the new trial prayed for dismissed with costs.

Motion & order of appeal.—Filed 24th Dec'r, 1868.

31 4th district court.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. & A. LEVI. } No. 17133.

On motion of the defendant, Abraham Levi, by his counsel, Race, Foster, & E. T. Merrick, and on suggesting to the court that said defendant feels himself aggrieved by the final judgment rendered against him in the above-entitled case, and that he is desirous of appealing from the same—

It is ordered by the court that said defendant, Abraham Levi, be allowed a suspensive appeal from the final judgment rendered against him, both as to the plaintiffs and his co-defendants, upon his executing his bond, with one or more solvent sureties, payable and conditioned according to law in the sum of thirty-five hundred dollars, and said appeal is hereby made returnable before the supreme court of the State of Louisiana, at New Orleans, on the 4th Monday of January next, 1869.

Bond.—Filed 24th Dec'r, 1868.

32 Know all men by these presents that we, Abraham Levi, as principal, and Edward Newman, as surety, are held and firmly bound unto the clerk of the fourth district court of the parish of Orleans, his successors in office, their executors, administrators, and assigns, in the sum of thirty-five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 24th day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-bound Abraham Levi has this day filed a motion of appeal from a final judgment rendered against him in the suit of E. Marqueze & Co. vs. Bloom, Kahn & Co. & al., No. 17133, in the fourth district court for the parish of Orleans, on the 10th day of December, 1868, and signed on the 21st day of December, 1868:

Now, the condition of the above obligation is such, that the above-bound Abraham Levi shall prosecute his said appeal, and shall satisfy whatever judgment may be rendered against him, or that the
33 same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said Edward Newman, his surety, shall be liable in his place.

(Signed) A. LEVI. [L. S.]
" E. NEWMAN. [L. S.]

Signed, sealed, and delivered in the presence of—
(S'g'd) JNO. M. COONEY.

Certificate.

I, Jno. M. Cooney, deputy clerk of the fourth district court for the

parish of Orleans, certify that the foregoing forty-seven (47) pages do contain a full, complete, and correct transcript of the record, including all proceedings had, documents filed, and evidence adduced on the trial of the cause, wherein E. Marqueze & Co. are plaintiffs and Solomon Bloom, Solomon Adler, Samuel Kahn, and Abraham Levi are defendants; which said cause was instituted on the 19th day of April,
1866, in the fourth district court of New Orleans, from said court
34 transferred to this, the court first above named, and which now remains of record herein, under the number 17133.

In testimony whereof I hereunto set my hand and affix the seal of said court, at the city of New Orleans, on this twenty-ninth day of December, in the year one thousand eight hundred and sixty-eight, and in the ninety-third year of the independence of the United States of America.

[SEAL.] (Signed) JNO. M. COONEY,
D'y Clerk.

35 Supreme court of the State of Louisiana.

Case submitted.—Extract from the minutes.

SATURDAY, *April 2d*, 1870.

The court was duly opened.

Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co., A. LEVY, APPELLANT. } No. 1980.

This case was called for trial, and the court having heard argument from E. T. Merrick, esq., of counsel for the intervenor, appellant herein, took the same under advisement upon the briefs now on file, for both parties, and the supplemental briefs to be filed on behalf of the appellant within four days from this date.

36 *Opinion.—Filed May 9th*, 1870.

E. MARQUEZ' & Co.
vs.
BLOOM, KAHN & Co. } No. 1980.

Appeal from the fourth district court for the parish of Orleans.

HOWELL, J.:

The only question presented in this appeal is the interruption of prescription.

The whole of the evidence on this point is in the testimony of one of plaintiffs' clerks, in the following words: "In about 1863, in the the spring, Mr. Levi was passing by the store, and Mr. Marqueze stopped him and asked about payment of bill, and Mr. Levi stated that he would attend to it. That was all I heard,"

This is not an acknowledgment of the creditor's right, which, under article 3486, C. C., interrupts prescription. The statement that he would

see about a bill does not prove that plaintiffs had the right to
37 demand payment of the bill in suit from the appellant, who made such a statement, or that the bill was correct and the appellant bound to pay it. At most it merely implies that he will enquire into its correctness and his liability to pay.

It is therefore ordered that the judgment against A. Levi, appellant, be reversed, and that there be judgment in his favor, with costs in both courts.

Decree.—Extract from the minutes.

MONDAY, *May 9th*, 1870.

The court was duly opened.

Present, their honors, John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William W. Howe, associate justices. Absent, W. G. Wyly, associate justice.

His honor, Justice Howell, pronounced the judgment and decree of the court in the following case:

E. MARQUEZE & Co.
vs.
BLOOM, KAHN & Co. } No. 1980.

38 On appeal from the 4th district court for the parish of Orleans.

It is ordered that the judgment against A. Levi, appellant, be reversed, and that there be judgment in his favor, with costs, in both courts.

Certificate of the clerk.

UNITED STATES OF AMERICA,
Supreme Court State of Louisiana:

I, T. McC. Hyman, deputy clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing thirty-eight (38) pages contain a true copy of the transcript of the proceedings had in the fourth district court for the parish of Orleans, in a certain suit wherein E. Marqueze & Co. were plaintiffs and Bloom, Kahn & Co. were defendants, and, also, of the proceedings had in this supreme court
39 on the appeal taken by said Abraham Levi, which appeal is now on the files thereof under No. 1980.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this twenty-first day of October, A. D. 1871, and in the ninety-sixth year of the independence of the United States of America.

[SEAL.] T. McC. HYMAN,
Deputy Clerk.

40 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Samuel Kahn, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in

the clerk's office of the supreme court of Louisiana, wherein E. Marqueze & Co., a commercial firm composed of Emile Marqueze, Alexis Bonnecaze, and William McMasters are plaintiffs in error, and Bloom, Kahn & Co., S. Bloom, S. Kahn, A. Levi, and S. Adler, the individual members of said firm, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

41 (Indorsed:)

United States circuit court. No . E. Marqueze & Co., pl'ffs in error, vs. Bloom, Kahn &. Co., S. Bloom, S. Kahn, A. Levi, & S. Adler, def'd'ts in error. Citation to S. Kahn.

Marshal's return.

Received Oct. 30, 1871, by the U. S. marshal, and, on the 1st day of November, 1871, served a copy hereof on S. Kahn by handing it to him at his house, 2d & Carondelet sts.

S. W. REED,
U. S. D'y Marshal.

On the 1st day of November, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 1st November, 1871.

F. A. WOOLFLEY,
U. S. Com'r, District of Louisiana.

42 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Abraham Levi, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of *of* Louisiana, wherein E. Marqueze & Co., a commercial firm composed of Emile Marqueze, Alexis Bonnecaze, and William McMasters, are plaintiffs in error and Bloom, Kahn & Co., S. Bloom, S. Kahn, A. Levi, and S. Adler, the individual members of said firm, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court U. S.

43 (Indorsed:)
United States circuit court. No. . E. Marqueze & Co., pl'ffs in error, vs. Bloom, Kahn & Co., S. Bloom, S. Kahn, S. Adler, & A. Levi, def'ts in error. Citation to A. Levi.

Marshal's return.

Received Oct. 30, 1871, by the U. S. marshal, and *and*, on the 31st day of October, 1871, served a copy hereof on A. Levi personally.

S. W. REED,
D'y U. S. Marshal.

On the 1st day of November, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 1st November, 1871,

F. A. WOOLFLEY,
U. S. Comm'r, District of Louisiana.

44 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Solomon Bloom, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of *of* Louisiana, wherein E. Marqueze & Co., a commercial firm, composed of Emile Marqueze, Alexis Bonnecaze, & William McMasters are plaintiffs in error, and Bloom, Kahn & Co., S. Bloom, S. Kahn, H. Levi, and S. Adler, the individual members of said firm, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

45. (Indorsed:)
United States circuit court. No. . E. Marqueze & Co., plff's in error, vs. Bloom, Kahn & Co., S. Bloom, S. Kahn, S. Adler, & A. Levi, def'd'ts in error. Citation to S. Bloom.

Marshal's return.

Received Oct. 30, 1870, by the U. S. marshal, and on the 31st October, 1871, served a copy hereof on S. Bloom, personally.

S. W. REED,
U. S. D'y Marshal.

On the 1st day of November, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 1st November, 1871,
F. A. WOOLFLEY,
U. S. Comm'r, District of Louisiana.

46 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Solomon Adler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of *of* Louisiana, wherein E. Marqueze & Co., a commercial firm, composed of Emile Marqueze, Alexis Bonnecaze, William McMasters, are plaintiffs in error, and Bloom, Kahn & Co., S. Bloom, S. Kahn, A. Levi, and S. Adler, the individual members of said firm, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plantiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

47 (Indorsed:)
United States circuit court. No. . E. Marqueze & Co., pl'ffs in error, vs. Bloom, Kahn & Co., S. Bloom, S. Kahn, S. Adler, & A. Levi, def'd'ts in error. Citation to S. Adler.

Marshal's return.

Received Oct. 30, 1871, by the U. S. marshal, and, on the 31st day of October, 1871, served a copy hereof on S. Adler by handing it to E. W. Huntington, his attorney herein, at his office No. 36 Camp street, in this city.

S. W. REED,
U. S. D'y Marshal.

On the 1st day of November, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 1st November, 1871.
F. A. WOOLFLEY,
U. S. Comm'r District of Louisiana.

48 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to Bloom, Kahn & Co., greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein E. Marqueze & Co. are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this the ninth day of September, A. D. 1871.

[SEAL.] JOSEPH P. BRADLEY,
Asso. Jus. Supreme Court United States.

49 (Indorsed:) E. Marqueze & Co., pl'ffs in error, vs. Bloom, Kahn & Co., S. Bloom, S. Kahn, A. Levi, and S. Adler, def'd'ts in error. Citation in error.

Received Oct. 16, 1871, by the U. S. marshal, and on the 17th day of October, 1871, served a copy of this citation in error on the following-named parties, in the manner following, to wit:

On Bloom, Kahn & Co., by handing the same to A. Levi, a member of the late firm of Bloom, Kahn & Co., at his office, No. 39 Union street, in this city; on A. Levi, in person, at his office, 39 Union street; on Samuel Kahn, by handing a copy to him in person, at the corner of Carondelet & Second streets, in this city; on Solomon Bloom, by handing a copy of it to him in person, at 102 Gravier street, in this city; on S. Adler, by handing a copy of it to E. W. Huntington, attorney of record for said Adler, at his office, No. 36 Camp street, in this city, on the 18th of October, 1871, being credibly informed that said Adler was absent from the city.

S. W. REED,
D'y U. S. Marshal.

NEW ORLEANS, *Oct.* 18, '71.

On this 18th day of October, 1871, personally appeared before me the subscriber, S. W. Reed, & makes oath that he served copies of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT, *D'y Cl'k.*

Filed Oct. 24th, 1871.

C. M. P. JULIAN, *Dep'y Cl'k.*

50 To the honorable Joseph P. Bradley, one of the justices of the Supreme Court of the United States:

The petition of E. Marqueze & Co., domiciled and doing business in the city of New Orleans, and now composed of Emile Marqueze, a resi-

dent of the city of Boston, State of Massachusetts, and William McMasters, jr., and Alexis Bonnecaze, residents of the city of New Orleans, in the State of Louisiana, respectfully represents:

That in the suit of E. Marqueze & Co. against Soloman Bloom, Soloman Adler, Samuel Kahn, and Abraham Levi, who resided in the State of Louisiana, and composed the commercial firm of Bloom, Kahn & Co., located and doing business at Clinton, in the parish of East Feliciana, in the said State of Louisiana, the supreme court of the State of Louisiana rendered judgment against your petitioners on the 9th day of May, A. D. 1870, and the same became a final judgment of that tribunal on the seventh judicial day thereafter, to wit, on the day of said month.

That the said supreme court of the State of Louisiana sus-
51 tained a plea of prescription, which had been set up by the said defendants, in defence of the action.

That petitioners claimed, in said action, an exemption from the operation of the laws of the State of Louisiana upon the subject of prescription during the late rebellion, under and by virtue of the act of Congress entitled "An act in relation to the limitation of certain actions," approved June 11th, 1864, which act provides as follows:

"That whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person who, by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings, cannot be served with process for the commencement of such action, or arrest of such person, or whenever, after such action, civil or criminal, shall have accrued, such person cannot, by reason of such resistence of the laws or such interruption of judicial proceedings, be served with
52 process for the commencement of the action, the time during which such person shall be beyond the reach of judicial process shall not be deemed or taken as any part of the time limited by law for the commencement of such action."

Petitioners further represent that, under the facts of the case, the plaintiffs being residents of the city of New Orleans, and the defendants having been domiciled and doing business at Clinton, parish of East Feliciana, State of Louisiana, (which place is shown by the record to have been continuously within the rebel lines, from the capture of the city of New Orleans by the United States troops, on the day of , 1862, up to the close of the war,) the supreme court of the State of Louisiana in maintaining, by its decision, the plea of prescription against petitioners, destroyed the rights secured to the plaintiffs by the aforesaid act of Congress, and violated and rendered the said act void and of no effect.

Petitioners further allege that there was manifest error in the said decision of the supreme court of the State of Louisiana, which will work to them irreparable injury, unless they can be relieved there-
53 from by a writ of error to the Supreme Court of the United States.

Wherefore petitioners respectfully pray that your honor may be pleased to grant them said writ of error, returnable to the Supreme Court of the United States, on the first Monday of December, A. D. 1871, on their giving bond with good and sufficient security, in such sum as the law requires, and for all other relief, &c.

LACEY & BUTLER,
Attorneys for Petitioners.

54 Let a writ of error from the judgment rendered by the supreme court of the State of Louisiana, in the case of E. Marqueze & Co., a commercial firm composed of Emile Marqueze, William McMasters, jr., and Alexis Bonnecaze, against S. Bloom, S. Kahn, S. Adler, and A. Levi, composing the commercial firm of Bloom, Kahn & Co., be granted as prayed for in the annexed petition, upon the petitioners and plaintiffs in error giving bond, with good and solvent security, for the sum of one thousand dollars, conditioned as the law directs; that the said writ be returnable to the Supreme Court of the United States on the first Monday of December next, and that the defendants in error be duly cited to answer the same.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of U. States, &c.
SEPTEMBER 9TH, 1871.

(Indorsed:) No. . E. Marqueze & Co., pl'ffs in error, vs. Bloom, Kahn & Co., S. Bloom, S. Kahn, A. Levi & S. Adler. Petition for writ of error & order. Lacey & Butler, attorneys. Filed Oct. 14th, 1871. C. M. P. Julian, dep'y cl'k sup. court State of La.

55 Know all men by these presents that we, E. Marqueze & Co., of the city of New Orleans, as principal, and Paul Bellocq and F. Charpaux, also of said city, as surities, are held and firmly bound unto S. Bloom, S. Kahn, A. Levi, and S. Adler, composing the commercial firm of Bloom, Kahn & Co., in the full and just sum of one thousand ($1,000.00) dollars, to be paid to the said Bloom, Kahn & Co., S. Bloom, S. Kahn, S. Adler, and A. Levi, their certain attorneys, executors, administrators, or assigns: To which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 15th day of August, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas in the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, State of Louisiana, in a suit depending in said court, wherein E. Marqueze & Co. are plaintiffs, and Bloom, Kahn & Co., & the individual members of said firm, are defendants, judgment was rendered against the said plaintiffs; and the said E. Marqueze & Co. having obtained a writ of error, and filed a copy thereof in the clerk's office of the Supreme Court to reverse the judgment in the aforesaid suit, and a citation directed to the said S. Bloom, S. Kahn, A. Levi, S. Adler, of Bloom, Kahn & Co., citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said E. Marqueze & Co. shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

E. MARQUEZE & CO. [L. S.]
PAUL BELLOCQ. [L. S.]
F. CHARPAUX. [L. S.]

Sealed and delivered in the presence of—

56 (Indorsed:)
United States circuit court. No. . E. Marqueze & Co. vs

Bloom, Kahn & Co. S. Bloom, S. Kahn, S. Adler, & A. Levi. Bond for writ of error. Filed , 1871. , clerk.
Approved.

JOS. P. BRADLEY,
Asso. Justice U. S. Sup'm C't U. States.

Paul Bellocq, being duly sworn, doth depose and say, that he is a resident of the city of New Orleans, and owns real estate in said city of an unencumbered value far greater than the sum of one thousand dollars, and that he is worth more than $1,000 over and above all his debts & liabilities.

PAUL BELLOCQ.

Sworn to & subscribed this 15th day of August, 1871, before me.
[SEAL.] JOHN P. MONTAMAT,
3d J. Peace.

F. Charpaux, being duly sworn, doth depose and say that he is a resident of the city of New Orleans, State of Louisiana, and owns real estate situated in said city of an unencumbered value greater than the sum of one thousand dollars, and that he is worth more than $1,000.00 over and above all his debts & liabilities.

F. CHARPAUX.

Sworn to & subscribed this 15th day of August, 1871, before me.
[SEAL.] JOHN P. MONTAMAT,
3d J. Peace.

57 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in the city of New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between E. Marquez, & Co., and Bloom, Kahn & Co., wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said E. Marquez' & Co., a commercial firm composed of Emile Marquez, William McMaster, jr., and Alexis Bonnecaze, and in favor of said S. Bloom, S. Kahn, A. Levi, and S. Adler, composing the said commercial firm of Bloom, Kahn & Co., as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court

of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 12th day of October, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. . E. Marquez' & Co., pl'ffs in error, versus Bloom, Kahn & Co. S. Bloom, S. Kahn, A. Levi, & S. Adler, defendants in error. Writ of error.

(Indorsement on cover:) No. 444. Emile Marquez', W'm McMasters, jr., and Alexis Bonnecaze, as E. Marquez' & Co., plaintiffs in error, vs. S. Bloom, S. Kahn, A. Levi, and S. Adler, as Bloom, Kahn & Co. Louisiana sup. court. Filed 1st December, 1871.

United States Supreme Court.

EMILE MARQUEZE, WILLIAM McMASTERS, JR. AND ALEXIS BONNECAZE, AS E. MARQUEZE & CO., PLAINTIFFS IN ERROR,

versus

S. BLOOM, S. KAHN, A. LEVI AND S. ADLER, AS BLOOM, KAHN & CO.

ARGUMENT ON MOTION TO DISMISS.

GEO. W. RACE,
E. T. MERRICK,
of Counsel for A. Levi.

United States Supreme Court.

December Term, 1871.

No. 444.

EMILE MARQUEZE, WILLIAM McMASTERS, JR. AND ALEXIS BONNECAZE, AS E. MARQUEZE & CO., PLAINTIFFS IN ERROR,

versus

S. BLOOM, S. KAHN, A. LEVI AND S. ADLER, AS BLOOM, KAHN & CO.

Please to take notice, that on Friday, the 6th day of December next, we shall move the Court to dismiss the writ of error in this case, on the grounds stated in the written motion on file and the grounds set forth in the Brief herewith handed you.
October 30, 1872.

GEO. W. RACE AND
E. T. MERRICK,
Counsel for A. Levi.

Received a copy of the foregoing notice and the annexed brief or argument this 7th day of November 1872
(Signed) Miles Taylor

United States Supreme Court.

EMILE MARQUEZE, WILLIAM McMASTERS, JR. AND ALEXIS BONNECAZE, AS E. MARQUEZE & CO., PLAINTIFFS IN ERROR,

versus

S. BLOOM, S. KAHN, A. LEVI AND S. ADLER, AS BLOOM, KAHN & CO.

ARGUMENT ON MOTION TO DISMISS.

It would be extremely difficult to bring a party into this Court as a defendant in error with any greater violation of substantial rules of practice than has been done in this case.

I. The judgment of the lower court was rendered in favor of a commercial firm composed of *two* persons resident in the city of New Orleans, Louisiana. The writ of error is sued out by another commercial firm, composed of THREE persons, one of whom pretends he is a citizen of Boston, Mass.—P. 1, 15, 22.

2. The judgment was rendered in the *District Court* of Louisiana, in favor of said commercial firm of *two*

members, and against *four* defendants, *Bloom, Kahn, Levi,* and *Adler.* Levi alone appealed to the Supreme Court of Louisiana and caused the judgment of the District Court of Louisiana to be reversed *as to himself alone.* So that there is final judgment in favor of the original plaintiffs, Marqueze and McMaster, (appearing to be McMaster senior) against Bloom, Kahn and Adler. *It was only reversed,* we repeat, *as to A. Levi by the Supreme Court of Louisiana. No other party appealed.* The bond given by plaintiffs in error ought to have been made payable to A. Levi by the original plaintiffs; it is given by another firm to Bloom, Kahn, Adler and Levi.

3. The writ of error does not give the christian or given name of the defendants, and there is a misdescription of the judgment.

4. The grounds upon which the Court is supposed to have jurisdiction are stated in the writ in the alternative hypothetically, and without any direct averment of such cause; and,

5. There was no question of law raised in the lower court as to A. Levi over which this Court can assume jurisdiction. There is no bill of exception, and no question was raised, except whether A. Levi, who, with the plaintiffs in that case, had resided for many years in New Orleans, had interrupted prescription by *an acknowledgment* of the debt. The question of fact, under the law of Louisiana, was decided against the the plaintiffs. The finding of the Supreme Court of Louisiana, being on a question of fact, presents no

question over which this Court will assume jurisdiction.

I.

The writ of error should be dismissed, because it is not sued out by the *two* original plaintiffs in *whose favor* the judgment stands, in the Fourth District Court, unappealed from as against Bloom, Kahn and Adler, and *against whom* it was rendered, *on appeal, by the Supreme Court of the State of Louisiana*, in favor of A. Levi; but it is sued out by another firm, composed of three partners, viz.: Emile Marquez, William McMasters, jr., and Alexis Bonnecaze. Pages 1, 22.

Tidd's Prac. p. 1053; Lancaster vs. Keyleigh Croke Charles, 300; Bushell et al. vs. Yaller, Ib. 408; Smith vs. James, Ib. 575.

"No one but a party to a suit can bring a writ of error."—18 Howard, 395, Conner vs. Pugh's Lessee, 20 Howard, 220, 221. See, also, Miller vs McKenzie, 10 Wal. 582.

The commercial firm of E. Marqueze & Co., who brought the original suit, and was composed of two partners, Marqueze and McMasters, (*apparently senior*,) p. 1, is, in the eye of the law of Louisiana, a "fictitious being," entirely different from the firm composed of Emile Marquez, William McMasters, Jr., and Alexis Bonnecaze, mentioned in the writ of error, p. 22.

"The partnership, once formed and put into action, becomes, in contemplation of law, a moral being, distinct from the persons who compose it. It is a civil

person, which has its peculiar rights and attributes."

Smith vs. McMicken, 3 Ann. 322, 7 Rob. 467.

The case, therefore, whether considered with reference to our law, which treats the two partnerships as two different artificial persons, or according to the rule of the common law, as the parties plaintiff in the writ of error, is fully covered by the two cases of Kail et al. vs· Wetmore and Sand vs. Douglass, 6 Wallace, 451, and should be dismissed.

II.

There is no judgment of *the Supreme Court of Louisiana*, to whom the writ of error has issued, against *the original plaintiffs as it respects S. Bloom, S. Adler, and S. Kahn*, and the writ of error ought to be dismissed also, because it has improperly joined other parties with said A. Levi, viz.: S. Bloom, S. Kahn, and S. Adler, who have no interest in the judgment rendered in his favor, and the bond given on the allowance of the writ of error is in favor of said S. Bloom, S. Kahn, S. Adler, and A. Levi, instead of said A. Levi alone.

A party against whom judgment is given cannot, when he does not appeal, avail himself of its reversal on the appeal of a party joined with him in the inferior court. Millaudon vs. Cujas, 6 L. R. p. 227, 228, On re-hearing. It is therefore clear that the judgment sought to be reversed is one between Emile Marqueze and William McMasters, original plaintiffs, and Abraham Levi, and they alone should have been parties to

the writ of error, and Abraham Levi was entitled, in the event of a writ of error, to have, for his protection, a bond payable to himself alone, as obligee. The bond is indispensable to the allowance of the writ of error, and should not be made payable to parties not affected by the allowance of the writ.—Judiciary Act 22 sec.; also, 1 Stat. at Large, 404.

See, also, Kail et al. vs. Wetmore, 6 Wallace, 481.
Davenport vs. Fletcher, 16 How. 142.
Miller vs. McKenzie, 10 Wal. 582.

III.

The judgment is not properly described in the writ of error.—Davenport vs. Fletcher, 16 H. 414.

IV.

If a party undertakes to set forth a cause of jurisdiction on the writ of error, it must be stated truly, and conform to the form of such writ.

V.

We understand this Court to hold, that it will not examine questions of fact in order to see if they have been correctly decided by the State Courts, and that where the State Court places the cases on any fact, this Court will not re-examine such fact in order to see if it might not have been found in such a manner as to have raised a question for the jurisdiction of this Court, but will respect the finding of the lower court.—Worthy, Ex'r, vs. Marston.

The *suspension* of prescription and the *interruption* of prescription are two different things.—C. C. articles 3482, 3484, 3486, 3487, 2491, 3516.

The Supreme Court of Louisiana, therefore, when it said the only question before them was the *interruption* of prescription, were using a technical term in the sense understood by the Code. As nobody pretended that prescription had been *interrupted* by a suit, the only question they could have considered was the one they did consider, viz.: whether it was interrupted by an acknowledgment of the debt by the debtor. *And they found it was not*, thus deciding the issue of fact in A. Levi's favor.

Were this Court inclined to enter into a re-examination of the facts, which we understand it refuses to do, it would find that A. Levi has resided in New Orleans from 1856 to the present time, and that the *plaintiffs in the original suit, who resided there with him in the city of New Orleans. could have sued him at any time.* Testimony of A. Levi, jr., pp. 9 and 10; petition, p. 1; bills of lading, pp. 8 and 9; testimony of E. Bonnecaze, p. 7.

The supposed accounts of the plaintiffs show that the goods were sold in New Orleans after the ordinance of secession was passed on the 26th day of January, 1861.—R. p. 2.

The *original* plaintiffs and defendant lived in the same city and jurisdiction during all the lapse of time needed for prescription of the account; and as the war

dissolved the partnership between A. Levi and his partners at Clinton, as Levi, a commercial partner, was bound in solido and at all times subject to an action for the whole debt, from the date of the sale, or from the credit if any was given, until the commencement of the suit, there is no ground of jurisdiction to the Courts of the United States, disclosed by the facts, if the Court were disposed to review the facts in the case. 3 Kent Com. p. 62, sec. 43 (6); Story on Partnership, §315; Griswold vs Waddington, 15 Johns. R. 57, 16 Johns. R. 438; Villa vs. Jonte, 17 Ann. Reports, 9; Conery vs. Hayes, 19 Ann. 325; Gaiennie vs. Aikins' Ex'r, 17 La. R. 42; C. C. 3484.

It is necessary to the jurisdiction of this Court, under the 25th section, that the record show, either by express words or necessary legal intendment, that one of the questions mentioned in the act was before the State Court, and was *decided* by it. Gibson vs. Choteau, 8 Wal. 314; Worthy vs. the Commissioners, 9 Wal. 613; Northern Railroad vs. The People, 12 Wal. 384.

Since writing the above, we have been kindly permitted to see the Brief of plaintiffs in error, and to understand more fully the grounds on which they expect this Court to assume jurisdiction.

We differ widely as to the facts of the case. They

say that the defendants were domiciliated at Clinton, La., and continued their domicil there until the close of the rebellion, while the plaintiffs' place of business continued during all of that time in New Orleans. This is an error as to the domicil of the defendant Levi. A. Levi's domicil was not at Clinton during any of that period. He resided in New Orleans all the time from A. D. 1854, and could have been sued in New Orleans at any time, as the proof shows.

The plaintiffs in error admit that seven months of prescription ran prior to the fall of New Orleans. This Court will, if need be, take judicial notice of the existence of the District Courts of New Orleans and their continuing to transact business immediately after the city came again under the dominion of the Federal authorities. This Court will also take judicial notice of the establishment of the Provisional Court by President Lincoln in October, 1862. This suit was commenced by service of citation April 24, 1866. Add the seven months conceded, and take the date of the Provisional Court in October, 1862, as the most favorable to plaintiffs, and we have a little over four years of prescription—one more than is needed to bar the demand of the *original* plaintiffs, as this Court will find, if it should concede to the *present* plaintiffs the right to re-examine the facts of the case. We submit that the record discloses nothing which shows that the act of Congress in relation to limitation of actions in certain cases, passed in 1864, has in any manner been drawn in question, and we think that

this Court will not re-examine the facts to see if the parties could not have raised the question on the trial below, if they had chosen to do so. *It is enough that no such question was raised, and that the case was tried in the lower court upon questions of fact only.* Neither the 25th section of the judiciary act of 1789, nor the 2d section of the act of 1867 allow of a writ of error unless the decision is against the right, title, privilege, or immunity "*specially set up and claimed*" in the State Court.—4 Statutes at Large, 85; 14 Stat. 1867, 385; Crowell vs. Randall, 10 Peters, 397 to 399; Hoyt vs. Shelden, 1 Black. 510.

In Maxwell vs. Newbold, 18 Howard, 515, it was decided, that "it must appear by record that one of questions stated in the 25th section of the act of 1789 *did arise*, and was *decided* in the State Court, and that it was not sufficient that it *might have* arisen or been applicable; it must appear that it *did arise*, and *was applied.*" See

The Grapeshot, 9 Wal. 133; Edwards vs. Tanneret, 12 Wal. 446.

We submit that the writ of error ought to be dismissed.

GEO. W. RACE,
E. T. MERRICK,
of Counsel for A. Levi.

Supreme Court of the U. S.

No. 444.

EMILE MARQUEZE, WM. McMASTERS, JR., AND ALEXIS BONNECAZE, AS E. MARQUEZE & Co.,
PLAINTIFFS IN ERROR,

VERSUS

S. BLOOM, S. KAHN, A. LEVI AND S. ADLER, AS BLOOM, KAHN & Co.

STATEMENT OF THE FACTS AND THE PLEADINGS.

On the 21st of March, 1861, Bloom, Kahn & Co., then a commercial firm, domiciled and doing business at Clinton, in the State of Louisiana, purchased from E. Marqueze & Co. a commercial firm domiciled and doing business in the City of New Orleans, certain merchandise valued at $353.97. On the 11th of the ensuing April they bought more goods to the amount of $79.85, and again on the 27th of June, of the same year, they purchased other merchandise worth $1045.40. These purchases were made with the agreement that they were to be paid for at four months from the respective dates of purchase, except for one-half of the last mentioned bill, which de-

fendants promised to pay in cash. Defendants wholly failed to comply with their agreement. A few months after all commercial intercourse between the City of New Orleans and Clinton, was stopped by the capture of New Orleans by the Federal forces, to-wit, on the 4th of May, 1862. At that time Clinton was within the rebel lines, and continued to be so situated until the close of the rebellion. The ordinary course of judicial proceedings was so continuously interrupted by the existence of the war, and by resistance to the laws of the United States, that none of the defendants could have been served with process, if suit had been brought by plaintiffs against them.

Shortly after the close of the war, and as soon as the jurisdiction of the State courts was sufficiently re-established to enable plaintiffs to enforce their rights, they instituted this suit against defendants in the Fourth District Court for the Parish of Orleans. The case was put at issue by the answers filed April 30th and May 5th, 1866, wherein defendants have pleaded in bar of plaintiffs' action the statutory plea of prescription of three years. On the 10th of December, 1868, judgment was rendered by the Fourth District Court, overruling the plea of prescription and condemning defendants *in solido* to pay to plaintiffs their entire claim. Abraham Levi, one of the defendants, took a suspensive appeal from said judgment to the Supreme Court of the State of Louisiana, and on the 9th of May, 1870, obtained a decree from that tribunal reversing the judgment of the court *a quo* and sustaining the plea of prescription.

This cause is now before the court upon a writ of error to the Supreme Court of the State of Louisiana, instituted under the Judiciary Act, approved March 2d, 1867.

ARGUMENT.

On the 11th June, 1864, Congress passed an act entitled, "An Act in relation to the Limitation of Actions in certain cases," and the following provisions of said act are relied upon by plaintiffs as a complete answer to the plea of prescription, set up as aforesaid by the defendants. * * * *

"That whenever during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person, who by reason of resistance to the execution of the laws of the United States, or by the interruption of the ordinary course of judicial proceedings, cannot be served with process for the commencement of such action, or arrest of such person."

"Or whenever after such action, civil or criminal, shall have accrued, such person cannot by reason of such resistance of the laws, or such interruption of judicial proceedings, be served with process for the commencement of the action."

"The time during which such person shall be beyond the reach of judicial process, shall not be deemed or taken as any part of the time limited by law for the commencement of such action."

The facts bring this case directly within the act of Congress above cited.

It appears from the Record that defendants were domiciled at Clinton, Louisiana. at the time the claim sued on was contracted, and that they continued their domicil there until the close of the rebellion; while plaintiffs' place of business continued during all of that period of time in New Orleans. On the 4th day of May, 1862, the Government troops took possession of New Orleans, (see the Circassian, 2d Wallace, 141), and the ordinary course of judicial proceedings was so interrupted by resistance to the laws of the United States, that defendants who were at Clinton and within the rebel lines, could not have been served with process, if suit had been brought by plaintiffs against them.

To prescribe plaintiffs' claim it was necessary that three years should elapse between the date their demand accrued and the institution of suit, and during which period no legal cause should interpose to interrupt prescription. By referring to the Record we find that plaintiffs' right of action did not begin until about the 1st of October, 1861. From that date to the occupation of the city of New Orleans by the Federal troops on the 4th of May, 1862, we will concede, for argument's sake, plaintiffs might have sued defendants in the courts of Louisiana; and thus may have passed seven months of the time during which prescription was running; but from May 4th, 1862, until the close of the rebellion, say June 1st, 1865, the courts of Louisiana were closed, so far as the rights of plaintiffs in this case are concerned; prescription was thereby interrupted, and its legal effects, as a bar to plaintiff's claim, were entirely suspended. In similar cases the interrup-

tion of prescription has been repeatedly recognized by this Court, and in the case of Levy vs. Stewart, 11 Wallace, p. 255, Mr. Justice Clifford said: "Where a debt has not been confiscated during war, the rule is now universally acknowledged that the right to sue revives when peace is restored, and the rule is that the restoration of peace returns to the creditor both the remedy and the right, which necessarily implies that the law of limitation was suspended during the same period."

On the 19th of April, 1866, (less than one year after hostilities had ceased), the State Courts having been re-established in New Orleans, and defendants then being within their jurisdiction, plaintiffs instituted this suit.

Thus it is shown that of the three years during which prescription could run to bar plaintiffs' claim, not more than a year and a half had elapsed when plaintiffs sought the aid of the courts to enforce their rights.

The plea of prescription must be overruled.

It would indeed be a work of supererogation to argue further the principles involved in this cause, since they have been so often and so clearly enunciated and established by the former decisions of this tribunal. We cite as authority:

Levy vs. Stewart, 11 Wallace, 244.
Stewart vs. Kahn, 11 Wallace, 493.
United States vs. Wiley, 11 Wallace, 508.
Hanger vs. Abbott, 6 Wallace, 532.
The Protector, 9 Wallace, 689.

Respectfully submitted.

Lacoy & Butler
Attys for Appellees

Wheeler H. Peckham
of Counsel

U. S. Supreme Court.

EMILE MARQUEZE, WILLIAM McMASTERS, JR.
AND ALEXIS BONNECAZE, AS
E. MARQUEZE & CO.

versus

I. BLOOM, S. KAHN, A. LEVI AND S. ADLER,
AS BLOOM, KAHN & CO.

BRIEF IN REPLY TO ARGUMENT ON MOTION TO DISMISS.

MILES TAYLOR,

AND

WHEELER H. PECKHAM.

Of Counsel for E. Marqueze & Co.

U. S. Supreme Court.

EMILE MARQUEZE, WILLIAM McMASTERS, JR. AND ALEXIS BONNECAZE, AS E. MARQUEZE & CO.

versus

I. BLOOM, S. KAHN, A. LEVI AND S. ADLER, AS BLOOM, KAHN & CO.

BRIEF IN REPLY TO ARGUMENT ON MOTION TO DISMISS.

I. The first ground submitted for a dismissal of the writ of error, is stated by Counsel for defendant in error, as follows :

"The writ of error is not sued out by the *two* original plaintiffs, in whose favor the judgment stands in the Fourth District Court, but is sued out by another firm, composed of *three* partners."

Counsel for defendant in error correctly states the law, when asserting "that the partnership once formed, and put into action, becomes, in contemplation of law,

a moral being, distinct from the persons who compose it. It is a civil person which has its peculiar rights and attributes." And this well recognized principle was fully sustained, by the Supreme Court of Louisiana, in the cases quoted from 3d Ann. 322; 7 Rob. 467.

The legal entity or partnership, is one thing; the persons who compose it, another. The former may exist, while the latter has undergone a change. The partnership of E. Marqueze & Co. was, at first, composed of E. Marqueze and William McMasters, but subsequent to its creation, a third person was admitted to participate in the benefits and privileges of the entity originally formed; and, notwithstanding the component parts of the partnership are not the same in number and persons, the civil being, or legal entity, which is the real plaintiff in this action, remains the same. No new partnership has been created; but a third person has stepped in, who, with the original parties, sustain a copartnership, which, so far as its existence as an entity is concerned, has undergone no change. Suppose that a proceeding, either at law or equity, had been commenced by A. and the party thus initiating proceedings during the pendency of the suit, had died, and his executor, administrator, or heirs, had become parties to the suit, in place of the deceased ancestor: After such change, is not the same plaintiff, in the eye of the law, before the Court? Such, we submit, is not only a correct legal proposition, but it is

made so, from the necessity of the case; for if an adverse position be correct, a partnership or fictitious being, which has brought its case before the Court, by a writ of error, must be continued with the same members, until the final determination of the cause, or the writ, upon a motion similar to that made by defendant in error, will be dismissed. An absolute denial of justice, which your Honors cannot for a moment countenance.

II. The second point, although made as a unity, really presents two separate propositions for the consideration of your Honors; the defendant in error, in the *first*, seeking to dismiss the writ of error, on the ground that I. Bloom, S. Kahn, and S. Adler, who, it is alleged, have no interest in the judgment appealed from with A. Levi, who *has* an interest in such judgment; and in the *second*, relying upon the fact, that the bond was given in favor of Bloom, Kahn and Adler, as well as Levi.

Conceding, for the sake of argument, that Bloom, Adler and Kahn are without interest as alleged, the mere joinder of persons with A. Levi, the real party in interest, cannot have the effect of dismissing the writ of error; for, under such circumstances, the making Bloom, Kahn and Adler parties must be regarded as mere surplusage; and ignoring them, the Court can well proceed to dispose of the case as against Levi. Where necessary parties are before the Court, the mere joinder of unnecessary parties cannot ope-

rate a dismissal of the proceeding. Why should it? Why should substantial justice be sacrificed to a barren technicality?

So, also, as to the bond. Although given in favor of Bloom, Kahn, Adler and Levi, it nevertheless is sufficiently protective of the latter. Under the decisions of the Supreme Court of Louisiana, a judicial bond, though joint upon the face of the instrument, is considered joint and several in its legal effect; so that each and every one of the sureties will be held jointly and severally liable for the whole amount of the bond. And applying the principle underlying this ruling to the parties in whose favor the bond is given, each and every one of the obligees has the lawful right to maintain an action for the recovery of the entire amount of the bond. Viewed in this light, A. Levi is entitled to demand the whole of the bond given on the allowance of the writ of error, and thus possessing a right to the recovery of the entire obligation, Levi has no right to complain of the bond being also made payable to Bloom, Kahn and Adler as well as himself.

Again: The bond is only nominal, being given to secure *costs already paid;* and thus, being without any real decided interest in the obligation, he cannot, with a show of justice or upon any good principle of law, object to the form in which it has been executed.

III. "The judgement is not properly described in the writ of error. The writ of error does not give the christian or given name of the defendants."

The writ of error is in the record, and speaks for itself. If the judgment is not there properly described, it is impossible to describe a judgment properly in any writ of error.

Your Honors are referred to the case of Davenport et al. vs. Fletcher et al., 16 Howard, 144, as authority upon which to sustain adverse counsel's motion to dismiss. We respectfully contend that the case cited has no application whatsoever to the case at bar. In the case of Davenport vs. Fletcher et al. the writ of error did not contain the names of *five* out of *six* of the plaintiffs in error, and for that reason the case was, on motion, dismissed, but with leave, however to the counsel for plaintiffs in error to move for its reinstatement. In the case at bar, the names of each and every plaintiff in error is separately and correctly given and embodied in the writ of error, and a simple reference to the record will show the fact. In Louisiana, a most equitable and reasonable statute has been lately enacted relative to appeals, from which we make the following extract, assured that your Honors will recognize its provisions as a true guide for sustaining the writ of error against the technical attacks set forth by adverse counsel:

"No appeal to the Supreme Court shall be dismissed on account of any defect, error, or irregularity of the petition, or order of appeal, or in the certificate of the clerk or judge; or in the citation of appeal, or service thereof, or because the appeal was not made returnable at the next term of the Supreme Court, whenever

it shall not appear that such defect, error, or irregularity is imputed to the appellant; but, in all cases, the Court shall grant a reasonable time to correct such errors or irregularities."—Ray's Revised Statutes of Louisiana, section 36, page 36.

IV. The fourth ground relied upon by counsel for defendants is stated as follows:

"If a party undertakes to set forth a cause of jurisdiction on the writ of error, it must be stated truly, and conform to the form of such writ."

Adverse counsel have failed to present either authority or argument which require the consideration or review of your Honors on this point. We contend that a cause of jurisdiction *is truly stated* in the writ of error, and as there is nothing urged by defendant to controvert that statement, we leave the point where they have abandoned it.

V. The fifth ground relied upon by the defendant in error, confusedly set forth in the brief filed by his counsel, may be more clearly stated as follows: It does not appear on the face of the Record that the Act of Congress, entitled "An Act in relation to the limitation of actions in certain cases," passed on the 11th day of June, 1864, was drawn in question through the decision rendered by the Supreme Court of the State of Louisiana, or that such Court refused to maintain the validity of that act; and consequently the action had by the Court, notwithstanding it is in direct violation of the aforesaid Act of Congress, cannot, in the Supreme Court of the United States, be assigned as a ground of reversal.

Upon the question of fact, we take issue with counsel for the defendant in error, and most emphatically assert that it *does* appear on the face of the Record, that the Supreme Court of the State of Louisiana did have drawn in question, and did refuse to give effect to the Act of Congress under consideration. Under the law of prescription, as known in Louisiana, or the statute of limitations as elsewhere designated, the right to bring an action for the recovery of an open account, did not expire until three years after such account had become payable.

The account sued on fell due about the 1st of October, 1861. From that date to the occupation of the city of New Orleans by the Federal troops, on the 4th of May, 1862, only seven months had expired. On or about the 1st day of June, 1865, the late rebellion was brought to a close; and on the 19th day of April, 1866, a period of less than eleven months after the termination of hostilities, suit was commenced in the Fourth District Court of the City of New Orleans.

From this statement it is apparent that the Supreme Court of Louisiana could not possibly have sustained the three years' prescription, without absorbing a portion of the time when, by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings, the defendant could not be served with process for the commencement of an action against them.

The seven months running from the maturity of the account to the date of the occupation of the City of

New Orleans, by Federal troops, when added to the eleven months extending from the cessation of hostilities, to the commencement of suit, make, together, eighteen months. Three years were required to maintain prescription; and there was no psssible method for the Supreme Court of Louisiana to have sustained that plea, except by ignoring the Act of Congress, and counting a portion of the time by such Act declared not to be embraced by the statute of limitations. Thus, the Supreme Court of Louisiana, not only brought into question, in the most vital manner, the Act of Congress, approved June, 1864, but totally destroyed its validity and effect. The decision of the Court necessarily intruded upon the Act of Congress; questioned it, and in the most effective manner rendered it nugatory and powerless: and we respectfully submit unto your Honors the questioning of a Federal statute, and a decision opposed to its validity, are patent of record, although made to appear so inferentially or negatively. The cause of error is as clearly shown from the face of the papers, as though it had been set forth in express and positive terms. The spirit of the law, not its words, is the matter for which the judiciary seeks.

Counsel for defendant in error mainly rely upon the decision of this Honorable Court, in Northern Rail Road vs. The People, reported in 12 Wallace, page 388; but we respectfully submit that the opinion of the Court, as expressed in that case, so far from affording support to the argument of adverse counsel, is

clearly in favor of the theory advocated by us. In that case, it did not appear that the validity or invalidity of the statute under consideration was in any way involved in the judgment of dissolution rendered by the State Court; and as such judgment was not shown to be in opposition to the statute, there was no question over which this Honorable Court had jurisdiction. Had it appeared that the judgment of the lower Court violated a right accorded by the statute of New York, your Honors would have maintained jurisdiction. Paraphrase the language of the Court, as used in the case referred to, so as to render it applicable to the case at the bar; or from the negative proposition therein stated, make an affirmative, and the opinion of your Honors will be well stated in the following language: "Plaintiff in error, claims under an act of Congress, adopted June, 1864; the validity of that statute was involved and destroyed by the judgment of the Supreme Court of the State of Louisiana, and therefore, there is a question here of which this Court has jurisdiction.

So much for the writ of error, as resting upon the Judiciary Act of 1789. Let us now direct attention to the Judiciary Act of 1867. This statute is revisory or amendatory of the Act of 1789, and omitting, as it does, the provision contained in the original Act, to the effect that the error assigned must appear on the face of the record, to have been considered by the lower Court, the part omitted cannot be kept in force by construction, but must be regarded as annulled.

This rule is clearly recognized by your Honors, in

Stuart vs. Kahn, 11th Wallace, 502; and relying upon the Judiciary Act of 1867, with the rule for its interpretation, as above declared, we maintain that whatever may have been the requirements of the Judiciary Act of 1789, relative to the point under consideration, it has not been necessary, since the adoption of the amendatory statute of 1867, that it should appear upon the face of the record that an Act of Congress was drawn in question, and a decision rendered adversely to its provisions. If the effect of the decision of the lower Court is to invalidate the Constitution or statutes of the United States, this Court, by that very fact, under the Judiciary Act of 1867, is invested with jurisdiction, and can proceed to hear and determine the matter.

Respectfully submitted,

MILES TAYLOR,

AND

WHEELER H. PECKHAM.

Of Counsel for E. Marqueze & Co.